

FILED

FERNANDO J. MARIN  
1088 ALAMITOS AVENUE #T  
LONG BEACH, CA. 90813  
PH# 562-786-2680 NO FAX  
NO EMAIL  
NO FAX

2015 SEP 15 AM 10:07

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
RIVERSIDE

BY: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CV-15-07229

MMM

(FILE)

CURT GREIDER TRUST, CURT GREIDER  
AS TRUSTEE

Plaintiff,

vs.

FERNANDO J. MARIN, JUAN JULIAN  
DOES 1 TO 5

Defendant

Case No.:

NOTICE OF REMOVAL UNDER 28  
U.S.C. 1332, 1391, 1441 (a) and 1446

SUPERIOR COURT OF CALIFORNIA  
CASE# 15F03662

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND ITS ATTORNEYS OF  
RECORD.

Pursuant to 28 U.S.C. 1332, 1391, 1441 (a) and 1446, the Defendant, FERNANDO J  
MARIN Pro Se, files this Notice of Removal of this case from the Superior Court of California,  
County of Los Angeles, to the United States District Court for the District of California. In  
support of this Notice of Removal, Defendant states as follows:

**CASE BACKGROUND AND FOUNDATION FOR REMOVAL**

1. On or about JULY 22<sup>ND</sup>, 2015, Plaintiffs commenced an action in the Superior Court of California, in Los Angeles County against the Defendant/Cross Plaintiff. Defendant/Cross Plaintiff currently has a pending Complaint filed against the Plaintiff for Various Violations of the California Civil Code, Declaratory Relief, and/or Intentional Misrepresentation and other causes of action against the Plaintiff of this case.
2. Defendant/Counter Plaintiff's presently seek judgment against Plaintiff for injuries that Defendant/Counter Plaintiffs allegedly suffered as a result of various violations under the Fair Debt Collection Practices Act. Defendant/Counter Plaintiffs' claims against Plaintiff are based on Plaintiff's alleged misrepresentation of the amount of debt due, and their own fraudulent actions.
3. True and correct copies of the Summons, Complaint and other pleadings or orders are Attached as Exhibit "A" and incorporated by reference.
4. This Court has original jurisdiction over the matter pursuant to 28 U.S.C. 1331. Further, this matter is one that may be removed to this Court pursuant to 28 U.S.C. 1441 because it is a civil action based upon the Federal Debt Collection Practices Act.
5. Venue is proper in this Court because the State Court Action is pending in the Superior Court of California, Los Angeles County. See 28 U.S.C. 1441 (a).

**AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00**

6. Plaintiffs do not quantify the amount of damages they seek to recover in this case. See complaint, Prayers for Relief. From the face of the Complaint, however, it is apparent that the amount in controversy more likely that not exceeds \$75,000.00, exclusive of interest and costs.

- 1 7. "The amount in controversy is ordinarily determined by the allegations of the Complaint,  
2 or, where they are not dispositive, by the allegations in the Notice of Removal". See  
3 *Laughlin v. Kmart Corp.*, 50F.3d 871, 873 (10<sup>th</sup> Cir.), cert denied, 516 U.S. 863 (1995).
- 4 8. When the plaintiff's damages are unquantified in the Complaint, the amount in  
5 Controversy can be established by allegations in the Removal Notice by reference to  
6 allegations on the face of the Complaint. *Cv. Martin v. Franklin Capital Corp.*, 251  
7 F.3d 1284, 1290 (10<sup>th</sup> Cir 2001). More specifically, the amount in controversy  
8 requirement can be satisfied by showing that it is facially apparent from the Complaint  
9 that the claims more likely that not exceed \$75,000.00. See *Allen v. R&H Oil and Gas*  
10 *Co.*, 63 F.3d 1326, 1335 (5<sup>th</sup> Cir. 1995); *Accord Singer v. State Farm Mutual*  
11 *Automobile Ins. Co.*, 116 F.3d 373, 377 (9<sup>th</sup> Cir. 1997); See also *Gilmer v. The Walt*  
12 *Disney Co., ET all.*, 915 F. Supp. 1001, 1007 (W.D. Ark 1996).
- 13 9. Here, the amount in controversy more like that not exceeds \$75,000.00 based on  
14 Plaintiff's claims, their alleged injuries and the recovery sought.
- 15 10. Defendant/Counter Plaintiff denies the allegations in the Complaint. Taking those  
16 allegations on their face as true, however, as this Court must do for the purpose of  
17 determining the propriety of removal, it is clear that Plaintiff's claims, as evidenced by  
18 the documents attached hereto as Exhibit "A" demonstrate an amount in controversy in  
19 excess of \$75,000.00
- 20 11. Given the complete diversity of the real parties and an amount in the controversy in  
21 excess of \$75,000.00, this Court has jurisdiction over the causes of action and claims  
22 asserted in the State Court Action pursuant to 28 U.S.C. 1332, and this action properly is  
23 removable pursuant to 28 U.S.C. 1441.
- 24 12. Diversity jurisdiction further exists in this case based on the following:  
25 A. The Plaintiff, CURT GREIDER TRUST, CURT GREIDER AS TRUSTEE, cannot  
26 state a claim for return of, damages to or diminution in volume of assets it does not  
27 own, or can prove ownership.
- 28

1 B. Based on its lack of ownership of the subject property, the Plaintiff, CURT  
2 GREIDER TRUST, CURT GREIDER AS TRUSTEE, has no standing to bring the  
3 claims set forth in their Complaint or Motion.

4 C. Due to the fact that CURT GREIDER TRUST, CURT GREIDER AS TRUSTEE,  
5 cannot state a claim upon which relief may be granted, the only proper parties to this  
6 action are the Defendant/Cross Plaintiff.

7 13. If the party with no standing is disregarded, this Court has original jurisdiction over the  
8 action pursuant to 28 U.S.C. 1332, and this case may be removed to this Court pursuant  
9 to U.S.C. 1441 (a).

#### 11 OTHER ISSUES

12 14. This Notice of Removal is timely filed. See 28 U.S.C. 1446(b).

13 15. This Notice of Removal has been served on Plaintiff's counsel. A Notice of Filing of  
14 Notice of Removal to Federal Court (attached as Exhibit "A") will be filed in the  
15 Superior Court of California, County of Los Angeles as soon as this Notice of Removal  
16 has been filed in this Court.

17 16. A Copy of the complete record maintained by the Clerk of the Superior Court, County of  
18 Los Angeles, California is attached to this Notice of Removal as Exhibit "A".

#### 22 CONCLUSION

23 Because Plaintiff and Defendant are citizens of different states, and the amount in  
24 controversy exceeds \$75,000.00, exclusive of interest and costs, this Court has jurisdiction over  
25 Plaintiff's claims pursuant to 28 U.S.C. 1332. Defendants are therefore entitled to remove this  
26 case to this Court pursuant to 28 U.S.C. 1441.

1           Wherefore, Defendant requests that the action now pending before the Superior Court of  
2 California, County of Los Angeles, California, Civil Action No. 15F03662, be removed to this  
3 Court.  
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8 Dated: 09-11-2015  
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A handwritten signature in black ink, appearing to read 'F. Marin', is written over a horizontal line.

FERNANDO J MARIN, IN PRO PER  
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1 **CERTIFICATE OF SERVICE BY MAIL**

2

3 The undersigned hereby certifies that on 09-14-2015, he served a copy of

4

5 **NOTICE OF REMOVAL**

6

7 By placing said copy in an envelope addressed to the person(s) hereinafter named, at the

8 places and address shown below, which are the last known addresses, and mailing said envelope

9 and contents in the U.S. Mail in Long Beach, California

10

11 Law Offices of STEVEN D. SILVERSTEIN #86466

12 14351 REDHILL AVE., SUITE G

13 TUSTIN, CA. 92780

14

15

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17 

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19 Juan Perez

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EXH BIT "A" 4

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STEVEN D. SILVERSTEIN #86466 ATTORNEY AT LAW 14351 REDHILL AVE., SUITE G TUSTIN, CA 92780  TELEPHONE NO.: 714-832-3651 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: COUNTY OF LOS ANGELES MAILING ADDRESS: 275 MAGNOLIA AVENUE CITY AND ZIP CODE: LONG BEACH, CA 90802 BRANCH NAME: SOUTH DISTRICT		
PLAINTIFF: CURT GREIDER TRUST, CURT GREIDER AS TRUSTEE  DEFENDANT: FERNANDO J. MARIN, JUAN JULIAN  <input checked="" type="checkbox"/> DOES 1 TO 5		
COMPLAINT — UNLAWFUL DETAINER* <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number):		
CASE NUMBER:		
Jurisdiction (check all that apply): <input checked="" type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input checked="" type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited		

1. PLAINTIFF (name each): CURT GREIDER TRUST, CURT GREIDER AS TRUSTEE

alleges causes of action against DEFENDANT (name each): FERNANDO J. MARIN, JUAN JULIAN

2. a. Plaintiff is (1) ☐ an individual over the age of 18 years. (4) ☐ a partnership.  
 (2) ☐ a public agency. (5) ☐ a corporation.  
 (3) ☒ other (specify): TRUSTEE OF THE TRUST

b. ☐ Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):

3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):  
 1088 ALAMITOS AVENUE #T, LONG BEACH, LOS ANGELES COUNTY, CA 90813

4. Plaintiff's interest in the premises is ☒ as owner ☐ other (specify):

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): 06/07/00 defendant (name each): FERNANDO J. MARIN, JUAN JULIAN

(1) agreed to rent the premises as a ☒ month-to-month tenancy ☐ other tenancy (specify):

(2) agreed to pay rent of \$ 700.00 payable ☒ monthly ☐ other (specify frequency):

(3) agreed to pay rent on the ☒ first of the month ☐ other day (specify):

b. This ☒ written ☐ oral agreement was made with

(1) ☐ plaintiff.

(3) ☒ plaintiff's predecessor in interest.

(2) ☐ plaintiff's agent.

(4) ☐ other (specify):

\*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

8

PLAINTIFF (Name): CURT GREIDER TRUST, CURT GREIDER AS TRUSTEE	CASE NUMBER:
DEFENDANT (Name): FERNANDO J. MARIN, JUAN JULIAN	

6. c. ☐ The defendants not named in item 6a are

- (1) ☐ subtenants.  
 (2) ☐ assignees.  
 (3) ☐ other (specify):

d. ☒ The agreement was later changed as follows (specify): RENT WAS INCREASED TO \$1,000.00 PER MONTH BEGINNING ON 04/01/15.

e. ☐ A copy of the written agreement, including any addenda or attachments that form the basis of this complaint, is attached and labeled Exhibit 1. (Required for residential property, unless item 6f is checked. See Code Civ. Proc., § 1166.)

f. ☒ (For residential property) A copy of the written agreement is **not** attached because (specify reason):

- (1) ☐ the written agreement is not in the possession of the landlord or the landlord's employees or agents.  
 (2) ☒ this action is solely for nonpayment of rent (Code Civ. Proc., § 1161(2)).

7. ☒ a. Defendant (name each): FERNANDO J. MARIN, JUAN JULIAN

was served the following notice on the same date and in the same manner:

- (1) ☒ 3-day notice to pay rent or quit  
 (2) ☐ 30-day notice to quit  
 (3) ☐ 60-day notice to quit  
 (4) ☐ 3-day notice to perform covenants or quit  
 (5) ☐ 3-day notice to quit  
 (6) ☐ Other (specify):

b. (1) On (date): 07/13/15 the period stated in the notice expired at the end of the day.  
 (2) Defendants failed to comply with the requirements of the notice by that date.

c. All facts stated in the notice are true.

d. ☒ The notice included an election of forfeiture.

e. ☒ A copy of the notice is attached and labeled Exhibit 2. (Required for residential property. See Code Civ. Proc., § 1166.)

f. ☐ One or more defendants were served (1) with a different notice, (2) on a different date, or (3) in a different manner, as stated in Attachment 8c. (Check item 8c and attach a statement providing the information required by items 7a-e and 8 for each defendant.)

8. a. ☒ The notice in item 7a was served on the defendant named in item 7a as follows:

(1) ☒ by personally handing a copy to defendant on (date): 07/09/15

(2) ☐ by leaving a copy with (name or description):

a person of suitable age and discretion, on (date): at defendant's

☐ residence ☐ business AND mailing a copy to defendant at defendant's place of residence on

(date): because defendant cannot be found at defendant's residence or usual place of business.

(3) ☐ by posting a copy on the premises on (date): ☐ AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (date):

(a) ☐ because defendant's residence and usual place of business cannot be ascertained OR

(b) ☐ because no person of suitable age or discretion can be found there.

(4) ☐ (Not for 3-day notice; see Civil Code, § 1946 before using) by sending a copy by certified or registered mail addressed to defendant on (date):

(5) ☐ (Not for residential tenancies; see Civil Code, § 1953 before using) in the manner specified in a written commercial lease between the parties.

b. ☐ (Name):

was served on behalf of all defendants who signed a joint written rental agreement.

c. ☐ Information about service of notice on the defendants alleged in item 7f is stated in Attachment 8c.

d. ☐ Proof of service of the notice in item 7a is attached and labeled Exhibit 3.

PLAINTIFF (Name): CURT GREIL & TRUST, CURT GREIDER AS TRUSTEE	CASE NUMBER:
DEFENDANT (Name): FERNANDO J. MARIN, JUAN JULIAN	

9. ☐ Plaintiff demands possession from each defendant because of expiration of a fixed-term lease.
10. ☒ At the time the 3-day notice to pay rent or quit was served, the amount of rent due was \$ 1,050.00
11. ☒ The fair rental value of the premises is \$ 33.33 per day.
12. ☐ Defendant's continued possession is malicious, and plaintiff is entitled to statutory damages under Code of Civil Procedure section 1174(b). (State specific facts supporting a claim up to \$600 in Attachment 12.)
13. ☒ A written agreement between the parties provides for attorney fees.
14. ☐ Defendant's tenancy is subject to the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

Plaintiff has met all applicable requirements of the ordinances.

15. ☐ Other allegations are stated in Attachment 15.
16. Plaintiff accepts the jurisdictional limit, if any, of the court.

**17. PLAINTIFF REQUESTS**

- |   |  |
|---|--|
| a. possession of the premises.                                      | f. <input checked="" type="checkbox"/> damages at the rate stated in item 11 from    |
| b. costs incurred in this proceeding:                               | (date): 08/01/15 for each day that   |
| c. <input checked="" type="checkbox"/> past-due rent of \$ 1,050.00 | defendants remain in possession through entry of judgment.                           |
| d. <input checked="" type="checkbox"/> reasonable attorney fees.    | g. <input type="checkbox"/> statutory damages up to \$600 for the conduct alleged in |
| e. <input checked="" type="checkbox"/> forfeiture of the agreement. | item 12.   |
|   | h. <input type="checkbox"/> other (specify):   |

18. ☒ Number of pages attached (specify): 4

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 6400–6415)**

19. (Complete in all cases.) An unlawful detainer assistant ☐ did not ☐ did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, state):

- a. Assistant's name:
- b. Street address, city, and zip code:

- c. Telephone No.:
- d. County of registration:
- e. Registration No.:
- f. Expires on (date):

Date: 07/22/15

STEVEN D. SILVERSTEIN #86466  
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

**VERIFICATION**

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF)